

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PHILLIP RODRIGUEZ,

Plaintiff,

V.

WARDEN KEITH GORSUCH, ET AL.,

Defendants.

CIVIL ACTION NO. 6:21-CV-00335-
JDK-JDL

ORDER ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Phillip Rodriguez, proceeding *pro se* and *in forma pauperis*, filed this civil rights action on August 25, 2021. (Docket No. 1.) On September 8, 2021, the Court issued an order for Plaintiff to show cause as to why his complaint should not be dismissed as barred by the statute of limitations and placed Plaintiff on notice that failure to respond would result in dismissal of the case for failure to prosecute or obey a court order. (Docket No. 6.) Plaintiff did not respond. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for the disposition of the action.

On January 19, 2022, Judge Love issued a Report (Docket No. 13), recommending Plaintiff's case be dismissed. Specifically, Judge Love recommended that the above-styled civil action be dismissed without prejudice for failure to prosecute or comply with a court order pursuant to Fed.R.Civ.P. 41(b). Further, Judge

Love also recommended that the action be dismissed without prejudice for failure to state a claim upon which relief may be granted due to the claim being barred by the relevant statute of limitations, pursuant to 28 U.S.C. § 1915A(b)(1). *Id.* On January 20, 2022, a copy of this Report was sent to Plaintiff at the address he provided. However, to date, no objections to the Report have been filed.

Because objections to Judge Love's Report have not been filed, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case, and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.").

Accordingly, it is **ORDERED** that the Report of the United States Magistrate Judge (Docket No. 13) is **ADOPTED** as the opinion of the Court and the above-styled civil action is **DISMISSED** without prejudice for failure to prosecute or comply with a court order pursuant to Fed.R.Civ.P. 41(b), and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1).

So **ORDERED** and **SIGNED** this **23rd** day of **February, 2022**.

A handwritten signature in black ink, appearing to read "Jeremy D. Kernodle", is written over a horizontal line.

JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE